



UNITED STATES PATENT AND TRADEMARK OFFICE

A

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,360	05/15/2001	Ludwig Guenther	DE92000038US1	8762
26502	7590	12/12/2005	EXAMINER	
IBM CORPORATION IPLAW IQ0A/40-3 1701 NORTH STREET ENDICOTT, NY 13760			LIN, KENNY S	
			ART UNIT	PAPER NUMBER
			2154	

DATE MAILED: 12/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/855,360

Applicant(s)

GUENTHER ET AL.

Examiner

Kenny Lin

Art Unit

2154

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-24.
Claim(s) withdrawn from consideration: 25 and 26.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


**JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100**

Art Unit: 2154

Attached Sheet

The final rejection mailed on 9/29/2005 was proper since the rejection was in response to the amended claims presented 11/29/2004 and newly added claims submitted on 8/15/2005.

All appropriate rejections should be made by the examiner until further evidence is presented by the applicant. The final rejection mailed on 9/29/2005 was proper since the final rejection mailed on 6/17/2005 was proper prior to the presentation of the evidence of common ownership of Banavar reference.

Applicant's statement of evidence of common ownership, found on page 14 of the after final response mailed on 8/15/2005, of Banavar reference was improperly made since it was not clear and conspicuous. See MPEP 706.02 (I)(2) II. Furthermore, the after final response present additional claims without canceling a corresponding number of finally rejected claims. The improper after final response was not entered by the examiner.

During the telephone interview dated on 9/13/2005, applicant timely made clear that Banavar reference is commonly owned and the examiner agreed to enter the after final response of 8/15/2005.

The final rejection mailed on 9/29/2005 was proper since the final rejection is necessitated by the presentation of evidence of common ownership. The new ground of rejection was necessitated only to remove the commonly owned reference. Furthermore, even though Banavar reference is commonly owned, Gordon reference, which was one of the combined references in rejecting claims 1 and 11 in the rejection mailed on 6/17/2005, suggested to teach the limitation of detecting conditions which the examiner previously rejected relying on Banavar.

Applicant's election with traverse of claims 25-26 in the reply filed on 11/28/2005 is acknowledged. The traversal is on the ground(s) that the claims are not directed to an invention distinct from and independent of the invention previously claimed. This is not found persuasive because claims 25-26 have separate utility such as "redirecting request in accordance with the second protocol to a client interceptor; said redirecting being performed by the SOCKS client using a SOCKS protocol" and "SOCKS client further adapted to redirect the request in accordance with the second protocol to a client interceptor using a SOCKS protocol" which were not presents in the original set of claims. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Claims 1-24 is not required for Claims 25-26, restriction for examination purposes as indicated is proper. The requirement is still deemed proper and is therefore made FINAL.

This application contains claims 25-26 drawn to an invention nonelected with traverse in Paper No. 11/28/2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

The after final response present additional claims without canceling a corresponding number of finally rejected claims. These new claims raise new issues and require further consideration and search. The after final response and amendment will not be entered.